## REMARKS

The Examiner has rejected Claims 8-14, 28-34 and 48-54 under 35 U.S.C. 112, second paragraph, as being indefinite. Specifically, the Examiner has argued that 'Claims 8, 28 and 48 recite, "transferring the entire requested file...to fulfill the request for data comprising a portion of the requested file"' and that "[i]t is unclear how the entire requested file is transferred while the request is only for data comprising a portion of the requested file."

Applicant respectfully asserts that applicant claims "receiving a request to transfer a file from computer malware scanning software" (see the independent claim-emphasis added), and furthermore "determining that the requested portion of the requested file cannot be transferred; and transferring the entire requested file and supplying the requested data to the computer malware scanning software to fulfill the request for data comprising a portion of the requested file" (see Claims 8, 28 and 48). Thus, clearly applicant claims a situation where "a request to transfer a file [is received]."

In addition, the Examiner has argued that, with respect to Claims 8, 28 and 48, there is insufficient antecedent basis for applicant's claimed "entire requested file." Applicant respectfully asserts that such rejection as well as the rejection of the claims depending therefrom have been avoided by virtue of the clarifications made hereinabove to the claims.

Further, the Examiner has rejected Claims 41-60 under 35 U.S.C. 101 as being directed toward non-statutory subject matter. The Examiner has suggested that the claims be amended to specify that the computer readable medium is a storage medium. Applicant respectfully asserts that such rejection has been avoided by virtue of the amendment made hereinabove to independent Claim 41, as suggested by the Examiner.

The Examiner has rejected Claims 1-6, 15-19, 21-26, 35-39, 41-46 and 55-60 under 35 U.S.C. 102(b) as being anticipated by Tso et al. (U.S. Patent No. 6,088,803).

Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims.

With respect to each of the independent claims, the Examiner has relied on Col. 3, lines 10-54 in Tso to make a prior art showing of applicant's claimed "receiving a request from the computer malware scanning software for data comprising a randomly accessed portion of the requested file."

Applicant respectfully asserts that the excerpt from Tso relied on by the Examiner merely discloses that a "content server 7 will transmit a requested data object as a series of contiguous portions" (Col. 3, lines 15-16). Also, such excerpt discloses that a "retained portion of the requested file enables [the] network device 4 to ensure that a virus-infected file will not reach [the] client device 1 in its entirety" (Col, 3, lines 29-32). In fact, applicant notes that Tso teaches that "[f]or most file types, only the last few bytes need be withheld" (Col. 3, lines 36-37).

Clearly, Tso only teaches "retain[ing a] portion of the requested file" where such portion is "the last few bytes [of the file]" (emphasis added), which does not even suggest any sort of "randomly accessed portion of the requested file" (emphasis added), as applicant specifically claims. Furthermore, the excerpt from Tso relied on by the Examiner only relates to streaming a requested file to a client device (Col. 3, lines 39-40), and not to "receiving a request from the computer malware scanning software for data comprising a randomly accessed portion of the requested file" (emphasis added), as claimed by applicant.

Applicant further notes that the Examiner has rejected independent Claims 1, 21 and 41 under 35 U.S.C. 102(e) as being anticipated by Makinson et al. (U.S. Patent No. 7,023,861). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims.

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With respect to each of the independent claims, the Examiner has relied on Col. 4, line 31-Col. 5, line 36 from Makinson to make a prior art showing of applicant's claimed "receiving a request from the computer malware scanning software for data comprising a randomly accessed portion of the requested file."

Applicant respectfully asserts that the excerpt from Makinson relied on by the Examiner simply discloses that if a "data packet has both a network layer protocol and an application layer protocol matching those that are to be scanned, then...the data packet is passed to the malware scanner" (Col. 4, lines 59-63), that "perform[ing] the concatenation of the data payload of the data packet into its respective data file" (Col. 5, lines 9-11), and that if "a complete data file has been received, then...the appropriate form of malware scanning [is applied]" (Col. 5, lines 22-24).

Clearly, the excerpt from Makinson relied on by the Examiner only suggests receiving data packets of a particular type that form a data file, and scanning the data file once all data packets associated therewith are received. Simply nowhere in the excerpt from Makinson relied on by the Examiner, however, is there any teaching or suggestion of "a randomly accessed portion of the requested file" (emphasis added), as applicant claims, let alone "receiving a request from the computer malware scanning software for data comprising a randomly accessed portion of the requested file" (emphasis added), as specifically claimed.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. This criterion has simply not been met by the above references, as noted above.

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Nevertheless, despite the foregoing paramount distinctions and in the spirit of expediting the prosecution of the present application, applicant has amended each of the independent claims to further distinguish the prior art of record. In particular, applicant has amended each of the independent claims as follows:

"receiving a request from the computer malware scanning software for data comprising a randomly accessed portion of the requested file, wherein the randomly accessed portion of the file is requested utilizing a byte range technique" (see the same or similar, but not necessarily identical language in each of the independent claims).

Applicant respectfully asserts that simply nowhere in the prior art excerpts relied on by the Examiner is there any teaching or suggestion of a "byte range technique," let alone where "the randomly accessed portion of the file is requested utilizing a byte range technique," as presently claimed by applicant. Thus, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. Particularly, applicant notes that the Examiner has rejected Claims 7-14, 20, 27-34, 40, 47-54 and 60 under 35 U.S.C. 103(a) as being unpatentable over Tso, in view of Moshir et al. (U.S. Patent No. 6,990,803).

With respect to dependent Claim 8 et al., the Examiner has relied on Col. 2, line 62-Col. 3, line 54 in Tso to make a prior art showing of applicant's claimed "determining that the requested portion of the requested file cannot be transferred; and transferring an entirety of the requested file and supplying the requested data to the computer malware scanning software to fulfill the request for data comprising a portion of the requested file" (as amended).

Applicant respectfully asserts that the excerpt from Tso relied on by the Examiner teaches one embodiment where "a request to data object [is received] from [the] client

device" and the "[n]etwork device 4...retrieves the requested data object" such that "[o]nce the file is completely received, [the] network device 4 invokes [the] virus checker." Further, such excerpt teaches another embodiment in which "a requested data object [is transmitted] as a series of contiguous portions." Clearly, such disclosure in Tso only teaches one embodiment in which a complete data object is received and another embodiment in which portions of the data object is received, but does not even mention "<u>determining</u> that the requested <u>portion</u> of the requested file <u>cannot be transferred</u>" (emphasis added), as applicant claims.

With respect to dependent Claim 9 et al., the Examiner has again relied on Col. 2, line 62-Col. 3, line 54 in Tso to make a prior art showing of applicant's claimed technique "wherein the requested portion of the requested file cannot be transferred because the requested portion of the requested file cannot be randomly accessed."

Applicant again respectfully asserts that the excerpt from Tso relied on by the Examiner only teaches one embodiment in which a complete data object is received and another embodiment in which portions of the data object is received. However, such excerpt does not specifically disclose any situation where "the requested portion of the requested file <u>cannot</u> be transferred," and especially not where "the requested portion of the requested file cannot be transferred <u>because the requested portion of the requested file</u> <u>cannot be **randomly accessed**</u>" (emphasis added), as claimed by applicant.

With respect to dependent Claim 10 et al., the Examiner has yet again relied on Col. 2, line 62-Col. 3, line 54 in Tso to make a prior art showing of applicant's claimed technique "wherein an indication that the requested portion of the requested file cannot be randomly accessed comprises an error indication or a transfer of the entire requested file."

Yet again, applicant respectfully asserts that the excerpt from Tso relied on by the Examiner only teaches one embodiment in which a complete data object is received and another embodiment in which portions of the data object is received. Simply nowhere in

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such excerpt is there any disclosure of any sort of "indication that the requested <u>portion</u> of the requested file <u>cannot be randomly accessed</u>," let alone where such indication "comprises an error indication or a transfer of the entire requested file" (emphasis added), as claimed.

With respect to dependent Claim 11 et al, the Examiner has relied on Col. 5, line 27-Col. 6, line 24 in Tso to make a prior art showing of applicant's claimed "tracking information associated with each transfer of a requested portion of the file; and determining that information associated with the file has changed."

Applicant respectfully asserts that the excerpt from Tso relied on by the Examiner simply discloses a "virus checking status indicator and a pattern version number" where the "pattern version number identifies which version of the virus pattern file was used to derive the virus checking status." Further, such excerpt discloses that "a list of deltas in its pattern file [are maintained]" and that the "virus checker 5 may systematically check all of the cached objects to bring them up to date after new virus patterns are received." In fact, applicant notes that the excerpt from Tso relied on by the Examiner only relates to "updat[ing] the virus scan of the cached objects."

Clearly, simply teaching versions of a <u>virus pattern file</u>, as in Tso, fails to meet applicant's claimed "tracking information associated with <u>each transfer of a requested portion of the file</u>; and determining that information associated with the **file** has changed," particularly where a "request to transfer [the] file [is] **from the computer malware scanning software**" (emphasis added), in the context claimed by applicant (see independent claims for context).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined)

must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 61-64 below, which are added for full consideration:

"wherein the byte range technique turns a serial download mechanism into a random access file mechanism" (see Claim 61);

"wherein the data associated with the request from the computer malware scanning software comprises a plurality of selected randomly accessed portions of the requested file" (see Claim 62);

"wherein the plurality of selected randomly accessed portions of the requested file are read in a random order" (see Claim 63); and

"wherein a system call handler intercepts system level calls made by the computer malware scanning software and simulates system level function calls utilized by the computer malware scanning software to determine whether the file includes the computer malware" (see Claim 64).

Again, a notice of allowance or a proper prior art showing of <u>all</u> of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.
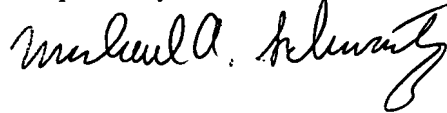
**Additional Fees:**

The Commissioner is hereby authorized to charge any insufficient fees or credit any overpayment associated with this application to Deposit Account No. 50-4047 (19903.0043).

**Conclusion**

In view of the foregoing, all of the Examiner's rejections to the claims are believed to be overcome. The Applicants respectfully request reconsideration and issuance of a Notice of Allowance for all the claims remaining in the application. Should the Examiner feel further communication would facilitate prosecution, he is urged to call the undersigned at the phone number provided below.

Respectfully Submitted,

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Dated: May 9, 2007

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